STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR RELATIONS BOARD	)	
- AND -	)	CASE NO. ULP-4443
TOWN OF COVENTRY	)	

DECISION
- AND -
ORDER

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the Town of Coventry, Rhode Island (hereinafter Respondent), predicated upon an Unfair Labor Practice Charge (hereinafter Charge) filed on January 7, 1991, by Local 2198, International Association of Fire Fighters AFL-CIO (hereinafter Local 2198).

The Charge, in substance alleged, that the Respondent had committed an Unfair Labor Practice by its threat to subcontract all of the work performed by the employees represented by Local 2198 and by the Respondent's actual advertising on December 24, 1990, for the submission of proposals to provide townwide centralized fire alarm dispatching services from qualified, private business firms, individuals, non-profit organizations, or municipal fire protection services during ongoing collective bargaining negotiations with Local 2198 in violation of R.I.G.L. 28-7-12 and 28-7-13.

Following the filing of the Charge on January 7, 1991, an informal conference was held on March 19, 1991. Following the informal conference, the Board issued its Complaint, alleging, in substance, that the Respondent had committed an Unfair Labor Practice in violation of R.I.G.L. 28-7-12 and 28-7-13, when the Respondent, during contract negotiations, threatened to subcontract out the fire alarm operation which would affect the members of Local 2198 and also when on December 24, 1990, the Respondent, advertised for proposals from qualified, private business firms, individuals, non-profit organizations, or municipal fire protection services to operate the Respondent's fire alarm operation, which work was then performed by members of Local 2198.

A formal hearing on the Complaint was held on April 6, 1992.

The oral testimony and documentary evidence established that on January 31, 1973, Local 2198 had been certified, by the Board in Case No. EE2052, as the sole and exclusive representative for the purpose of collective bargaining in a bargaining unit of "Firefighters and Fire Alarm Operators". Following this certification, at least (1) one Collective Bargaining Agreement was entered into between Local 2198 and the Respondent. The evidence did not disclose for how long a period the parties may have entered in written Collective Bargaining Agreements However, Local 2198 was never decertified as the bargaining unit for either Firefighters and/or Fire Alarm Operators.

In the fall of 1990, Local 2198 and the Respondent commenced negotiations for a Collective Bargaining Agreement to commence effective July 1, 1990. Three (3) negotiating sessions were held. The dates of the first and second sessions were never established in the record. The third session was held on October

19, 1990, at which session Local 2198 and the Respondent exchanged proposals. According to written ground rules for negotiations which were dated October 5, 1990, and signed by the representatives of Local 2198 and the Respondent, October 19, 1990, was the last day for the exchange of proposals and no additional proposals could be introduced by either party after said date. At the October 19, 1990, negotiating session, the Respondent presented a full and detailed proposed written Collective Bargaining Agreement as its proposal. As part of its proposal, the Respondent had included in Article V thereof entitled "Management Rights", Subparagraph K which would give the Respondent the right: "To establish contracts or subcontracts for Town operations when it is determined to be in the best interest of the Town". This proposal was rejected by Local 2198 at that time. During the negotiating session of October 19, 1990, the Respondent notified the Negotiating Committee of Local 2198 that it, the Respondent, was contemplating the subcontracting of the entire fire alarm operation and was contemplating advertising for the solicitation of proposals for the operation of the townwide fire alarm operation. It is critical, in this case, to note that the only employees of the Respondent that were to be included in the proposed Collective Bargaining Agreement were the employees in the fire alarm operation conducted by the Respondent. While the unit certified in Case No. EE2052 included firefighters - no firefighters were at that time employed by the Respondent.

As background information, the Town of Coventry (Respondent) had seven (7) separate fire districts which provided firefighting services. These seven (7) fire districts were separate and

distinct entities from the Respondent. The Respondent employed no firefighters[1].

In justification of its notification to Local 2198, at the negotiating session of October 19, 1990, that it was contemplating the subcontracting of the services performed by members of Local 2198, the Respondent pointed to a problem which it had had on October 2, 1988, when a fire alarm operator had allegedly slept through an emergency call. The Town Manager of the Respondent, Francis A. Frobel, testified that the Respondent had, following this incident, investigated and researched the matter of the possible privatization of the Respondent's fire alarm operations.

It was not until December 24, 1990, well over two (2) years after the alleged sleeping incident occured and after collective bargaining had begun that the Respondent advertised for proposals to operate the fire alarm operation of the Town. The evidence further established that the only proposals submitted in response to this advertisement came from the Anthony Fire District, whose Chief was Stanley J. Mruk, who also, as previously noted, was Superintendent of Fire Alarm of the Respondent and also served on the Respondent's Negotiating Committee. This bid to operate the Respondent's fire alarm was in the amount of $118,572.00. The current budget by the Respondent, at that time, for the fire

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1. The fire alarm operators were under the supervision of the Superintendent of Fire Alarm, Stanley J. Mruk, who was also the Chief of the Anthony Fire District, one (1) of the seven (7) fire districts in the Town of Coventry and also served on the Respondent's Negotiating Committee.

alarm operation was $117,796.00. Thus, it would cost the Respondent $776.00 more on the bid basis.

The testimony further established that Chief Stanley J. Mruk, during the collective bargaining sessions, made it clear that he harbored strong feelings against Local 2198 and its members (fire alarm operators). Lee Hudson, a fire alarm operator, testified that at the negotiating session of October 19, 1990, Chief Mruk stated that: "...they were going to have a hot dog roast at the firing when they let us all go". This comment clearly came after the notice that the Respondent was considering the privatization of the fire alarm operations. In addition, Brad Anderson, a fire alarm operator, testified that at the same negotiating session after the discussion relating to subcontracting the fire alarm operations, Chief Mruk said that he (Mruk) "...would invite the public and sell hot dogs at the firing". When the Town Manager testified that he did not hear such comments by Chief Mruk, he did testify as to other comments made by Chief Mruk at the negotiating sessions that were a clear indication of a hostile attitude held by Chief Mruk in relation to Local 2198, its representatives and members.

The Board has no doubt that following the sleeping incident of October 2, 1988, consideration was given to the possible privatization of the Respondent's fire alarm operations, as a result of the concerns of several of the Chiefs of the various fire districts. However, in reviewing all of the evidence and the timing of the notification of possible privatization given to Local 2198 at the third negotiating session on October 19, 1990, and the advertising on December 24, 1990, the Board is convinced that the delay by the Respondent until October 19, 1990 (the date of the third negotiating session), to announce its possible

advertising for proposals to outside agencies to operate the fire alarm operation was timed and was calculated to have an adverse impact upon the freedom of the fire alarm operators and Local 2198 to engage in collective bargaining free from interference or coercion as provided for in R.I.G.L. 28-7-12. It cannot seriously be argued that such announcement on October 19, 1990, after over two (2) years of alleged study of privatization and during the negotiations for a written Collective Bargaining Agreement, when no written Collective Bargaining Agreement had been into effect for many years, was not calculated to have an adverse impact upon the free exercise of the rights guaranteed by R.I.G.L. 28-7-12.

Further, the Board is convinced by the evidence that while not all of the Respondent's Negotiating Committee had the same feelings as Chief Mruk, it must be born in mind that he was the Superintendent of Fire Alarms and was the direct boss of the four (4) fire alarm operators. His feelings and comments were of such nature as to impede the freedom of the collective bargaining process.

The evidence also established that either at the meeting of October 19, 1990, or immediately thereafter, the Respondent questioned the status of Local 2198 as the Certified Bargaining Agent for the fire alarm operators. On November 14, 1990, Local 2198 furnished documentary evidence of its Certification in Case No. EE2052 and a letter from the Board dated March 14, 1989, that a Bargaining Unit was already in existence (i.e. Case No EE2052). This documentary evidence clearly established that Local 2198 was the duly Certified Bargaining Representative for the fire alarm operators employed by the Respondent. This information was relayed to the Respondent's legal counsel on

November 14, 1990. Between November 14, 1990, and January 7, 1991, Local 2198 sought additional meetings for collective bargaining purposes but was unsuccessful in its efforts. Following January 7, 1991, the Respondent has refused to participate in collective bargaining because of the pendency of the present Unfair Labor Practice Charge. Such refusal is in direct violation of R.I.G.L. 28-7-13 (6) and the Board will so find.

Based upon a review of all oral testimony and documentary evidence, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Local 2198 is a labor organization within meaning of R.I.G.L. 28-7-1 et seq.

2. Local 2198 is the duly established sole and exclusive Bargaining Representative for all firefighters and fire alarm operators employed by the Respondent with respect to rates of pay, hours of employment and all other conditions of employment.

3. Local 2198 and the Respondent had commenced negotiations in the fall of 1990 for a Collective Bargaining Agreement, the term of which was to be effective on July 1, 1990.

4. On October 19, 1990, while Local 2198 was the sole and exclusive Bargaining Agent for fire alarm operators employed by the Respondent, the Respondent unilaterally announced that it was considering the advertising for proposals to privatize the work performed by said fire alarm operators.

5. The privatization of the Respondent's firm alarm operations would have a direct and adverse impact upon the fire alarm operators represented by Local 2198.

6. On December 24, 1990, the Respondent, without the consent or agreement of Local 2198, advertised a "Request for Proposal Fire Alarm Operation", seeking proposals from qualified, private business firms, individuals, non-profit organizations, or municipal fire protection services, to provide townwide, centralized fire alarm dispatching services for the Respondent

7. The "Request for Proposal Fire Alarm Operation" contained no requirement for the retention of the four 4) then presently employed fire alarm operators.

8. The "Request for Proposal Fire Alarm Operation" did reserve the right of the Respondent to reject any part of any such proposal.

9. The Respondent received only one (1 bid proposal, which proposal was made by the Anthony Fire District, one (1) of the seven (7) fire districts located within the territorial limits of the Respondent, whose Chief was Stanley J. Mruk and who also was the Superintendent of Fire Alarms for the Respondent and who was the direct Supervisor of the Respondent's Fire Alarm Operators and served as a member of the Respondent's Negotiating Committee.

10. The Respondent had, up to the hearing herein on April 6, 1992, continued to operate the fire alarm dispatching services as it had done in the past.

11. From November 14, 1990, up to January 7, 1991, Local 2198 sought to have additional collective bargaining sessions but the Respondent did not agree

On January 7, 1991, Local 2198 filed an Unfair Labor Practice Charge which is the subject of the Complaint in this matter.

Since January 7, 1991, the Respondent has refused to engage in collective bargaining until such time as this pending Unfair Labor Practice Complaint has been resolved.

14. Chief Stanley J. Mruk was a member of the Respondent's duly constituted Negotiating Committee and was, during the negotiating period and up to the date of hearing herein on April 6, 1992, the Superintendent of Fire Alarms for the Respondent and the immediate Supervisor of the members of Local 2198 employed by the Respondent as Fire Alarm Operators.

Comments made by the said Stanley J. Mruk at various collective bargaining sessions were calculated to coerce the Respondent's Fire Alarm Operators in their free exercise of their rights to engage in collective bargaining.

Comments made by the said Stanley J. Mruk at various collective bargaining sessions did interfere with the right of the Respondent's Fire Alarm Operators represented by Local 2198 in their free exercise of their rights to engage in collective bargaining.

CONCLUSIONS OF LAW

1. Local 2198 has proven by a fair preponderance of the credible evidence that it was and is the duly Certified Collective Bargaining Representative for the fire alarm operators employed by the Respondent.

2. Local 2198 has proven by a fair preponderance of the credible evidence that the Respondent committed an Unfair Labor Practice in violation of R.I.G.L. 28-7-12 by unilaterally

announcing, at the negotiating session of November 19, 1990, that it was considering the privatization of the fire alarm operations of the Respondent resulting in a prohibited interference with and coercion of the Respondent's Fire Alarm Operators in their free exercise of the collective bargaining rights guaranteed to them by said Section 12.

3. Local 2198 has proven by a fair preponderance of the credible evidence that the Respondent committed an Unfair Labor Practice in violation of R.I.G.L. 28-7-12 by unilaterally advertising on December 24, 1990, a "Request for Proposals Fire Alarm Operation" seeking proposals from qualified private business firms, individuals, non-profit organizations or municipal fire protection services to provide townwide, centralized fire alarm dispatching services, resulting in a prohibited interference with and coercion of the Respondent's Fire Alarm Operators in their free exercise of the collective bargaining rights guaranteed to them by said Section 12.

4. Local 2198 has proven by a fair preponderance of the credible evidence that the Respondent committed an Unfair Labor Practice by its refusal to continue collective bargaining negotiations which had commenced in the fall of 1990 in violation of R.I.G.L. 28-7-13 (6) and (10).

5. Local 2198 has proven by a fair preponderance of the credible evidence that the Respondent committed an Unfair Labor Practice in violation of R.I.G.L. 28-7-12 by the comments and statements of Stanley J. Mruk, calculated to interfere with and coerce the fire alarm operators and Local 2198 in their free exercise of their right of self-organization and to engage in collective bargaining free from such interference and coercion

ORDER

1. The Respondent shall cease and desist from any and all activity designed to subcontract the performance of the duties of fire alarm operators without first negotiating therefore with Local 2198.

2. The Respondent shall cease and desist from refusing to negotiate with Local 2198 concerning the terms and conditions of employment of fire alarm operators represented by Local 2198.

3. The Respondent is directed to resume negotiations with Local 2198 concerning the terms and conditions of fire alarm operators employed by the Respondent within thirty (30) days of the date hereof, with all terms and conditions of employment to be retroactive to July 1, 1990.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Joseph V. Gulvey, Chairman

Raymond Petrarca

Glenn H. Edgecomb

Daniel L. Beardsley, Jr.

Entered as Order of the
Rhode Island State Labor Relations Board

DATED: September 9, 1992.

BY: